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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,391	01/28/2004	Anthony Di Bitonto	B0224.0079	2535
32173 7590 02/17/2009 DICKSTEIN SHAPIRO LLP 1177 AVENUE OF THE AMERICAS (6TH AVENUE) NEW YORK, NY 10036-2714				
EXAMINER				
NGUYEN, PHONG H				
ART UNIT		PAPER NUMBER		
3724				
MAIL DATE		DELIVERY MODE		
02/17/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/765,391

Applicant(s)

DI BITONTO ET AL.

Examiner

PHONG H. NGUYEN

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1.5-8,16,17,20 and 22-29 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1.5-8,17,20,22-27 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings filed on 12/15/2008 are accepted.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 5-8, 17, 20 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (4,614,031) in view of Litton (Des. 392,419).

Regarding claims 1 and 23, Chen teaches a nail clipper comprising a top elongated member 32 and a bottom elongated member 18 forming cutting edges (20 and 40), a lever 32, a first post 24 (it is to be noted that since the Applicant calls a plate a post, and does not limit the size of the plate relative to the nail clipper, the Examiner considers plate 24 a post), and a second post 50 provided on a lever 32, wherein the first post and the second post connected through a hinge 30. See Figs. 1 and 7.

Chen does not teach a bumper on the bottom surface of the bottom member 24.

Litton teaches providing a bumper on the bottom surface of a bottom member for comfortably holding the nail clipper. See Fig. 1.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide a bumper as taught by Litton to the bottom surface of the bottom member of Chen so that one can hold the nail clipper comfortably.

Regarding claims 5 and 25, a section of the bumper having a triangular shape is best seen in Fig. 1 in Litton.

Regarding claims 6 and 24, Chen teaches the invention substantially as claimed except for the lever having a thumb accepting depression.

Litton teaches providing a thumb accepting depression on the lever for comfortably holding the nail clipper. See Fig. 1.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide a thumb accepting depression as taught by Litton to the lever of Chen so that one can hold the nail clipper comfortably.

Regarding claim 7, the cutting edges of the Chen's nail clipper being at an angle with respect to a central longitudinal axis of the elongated member are best seen in Fig. 1 in Chen.

Regarding claims 8 and 27, the cutting edges being disposed at an angle to a central longitudinal axis of the top and bottom elongated members are best seen in Fig. 1 in Chen.

Regarding claims 17 and 29, the top and bottom elongated members not being interconnected at the distal ends (at the lower left of element 42) are best seen in Fig. 1 in Chen.

Regarding claim 22, Regarding claim 1, Chen teaches a nail clipper comprising a top elongated member 32 and a bottom elongated member 18 forming cutting edges (20 and 40), a lever 32, a first post 24 (it is to be noted that since the Applicant calls a plate a post, and does not limit the size of the plate relative to the nail clipper, the Examiner considers plate 24 a post), and a second post 50 provided on a lever 32, wherein the first post and the second post connected through a hinge 30. It is to be noted that the top and bottom elongated members are not interconnected at the lower left of element 42. See Figs. 1 and 7.

Chen does not teach a bumper on the bottom surface of the bottom member 24.

Litton teaches providing a bumper on the bottom surface of a bottom member for comfortably holding the nail clipper. See Fig. 1.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide a bumper as taught Litton to the bottom surface of the bottom member of Chen so that one can hold the nail clipper comfortably.

Regarding claims 20 and 25, a section of the bumper having a triangular shape is best seen in Fig. 1 in Litton.

Regarding claim 26, a thumb accepting depression is best seen in Fig. 1 in Litton.

Response to Arguments

4. Applicant's arguments filed 12/15/2008 have been fully considered but they are not persuasive.

The Applicant argues that elements 50 and 30 form a hinge but not element 30 itself. This argument is not persuasive. It depends on how one looks at elements 44, 30, 50 and 24, elements 50 and 30 can be considered a hinge or element 30 itself can be considered a hinge. Elements 50 and 30 form a hinge for the combination of elements 44 and 24. However, in the combination of elements 50 and 24, element 30 is a hinge for element 50.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHONG H. NGUYEN whose telephone number is (571)272-4510. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

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Customer Service Representative or access to the automated information system, call
800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. H. N./
Examiner, Art Unit 3724
February 12, 2009